

## **REMARKS**

In view of the above amendments and the following remarks, reconsideration and entry of the following remarks are respectfully requested.

Although no claims have been amended, added, or canceled in the present response, a complete listing of the claims has been again provided for the convenience of the Examiner (and all viewers of the electronic file) in order to have the most up-to-date set of claims in the most recent paper submitted by the applicant. In the previous response, claims 1-9 were canceled for consideration in a potential divisional application. As a result of these amendments, claims 10-32 are currently pending. The application was subject to a restriction requirement, and Group II was elected in a prior response. As a result, claims 14-16, 26 and 30 were previously withdrawn from consideration. Consequently, claims 10-13, 17-25, 27-29, 31, and 32 are currently pending and under consideration.

### **Claim Rejections Under 35 USC §102**

In items 3-10 of the Office Action, all of the currently considered claims were “rejected under 35 U.S.C. 102(e) as being anticipated by Sakata et al (US Pat No. 20040215224).” However, considering Sakata’s parent PCT application (WO 03/007819 A1) was not published in English (but rather, apparently in Japanese), Sakata is clearly not prior art under 35 U.S.C. §102(e). For instance, MPEP §706.02(f)(1) specifically highlights this fact (emphasis added):

**Example 5** : References based on the national stage (35 U.S.C. 371) of an International Application filed on or after November 29, 2000 and which was not published in English under PCT Article 21(2) .

**All references, whether the WIPO publication, the U.S. patent application publication or the U.S. patent, of an international application (IA) that was filed on or after November 29, 2000 but was not published in English under PCT Article 21(2) have no 35 U.S.C. 102 (e) prior art date at all.** According to 35 U.S.C. 102 (e), no benefit of the international filing date (nor any U.S. filing dates prior to the IA) is given for 35 U.S.C. 102 (e) prior art purposes if the IA was published under PCT Article 21(2) in a language other than English, regardless of whether the international application entered the national stage. Such references may be applied under 35 U.S.C. 102 (a) or (b) as of their publication dates, but never under 35 U.S.C. 102 (e).

Moreover, Sakata and Sakata's parent PCT application (WO 03/007819 A1) do not qualify as prior art under 35 U.S.C. §102 (a) or (b). The present application claims the benefit of the December 30, 2002 filing date of U.S. Provisional Patent Application No. 60/437,002, and it should be easily recognized that the currently considered claims are supported by this provisional application (see e.g., FIGS. 1-6 in both applications). Sakata (US 2004/0215224 A1) and Sakata's PCT application (WO 03/007819 A1) were published on October 28, 2004 and January 30, 2003, respectively, after the December 30, 2002 priority date for the present application. Therefore, Sakata and Sakata's parent PCT application do not qualify as prior art under 35 U.S.C. §102 (a) or (b) as well. It is therefore respectfully requested that the rejections of the claims under 35 U.S.C. §102(e) be withdrawn and the application be allowed to pass to issue.

### **Conclusion**

It should be understood that the above remarks are not intended to provide an exhaustive basis for patentability or concede the basis for the rejections in the Office Action, but are simply provided to overcome the rejections made in the Office Action in the most expedient fashion.

In view of the above amendments and remarks, it is submitted that the present application is now in condition for allowance, and the Examiner is requested to pass the case to issue. If the Examiner should have any comments or suggestions to help speed the prosecution of this application, the Examiner is requested to contact the undersigned representative by telephone.

Respectfully submitted,

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